



INDUSTRY CIRCULAR

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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LABEL STATEMENTS, ADVERTISING AND ANALYTICAL TOLERANCES FOR MALT BEVERAGES

Brewers, Importers, Wholesale Malt Liquor Dealers and Others Concerned:

Purpose. The purpose of this circular is to inform industry members and others concerned that an ATF Ruling will be published in the July-September quarterly issue of the Alcohol, Tobacco and Firearms Bulletin. This ruling will supersede ATF Ruling 76-1, 1976 ATF C.B. 82, and will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms has been asked to review its present position regarding statements of caloric and carbohydrate content in the labeling and advertising of malt beverages.

CALORIC and CARBOHYDRATE CONTENT

Sections 5(e) and 5(f) of the Federal Alcohol Administration Act, implemented by regulations in 27 CFR, Part 7 for malt beverages, relate to prohibited statements and practices in labeling or advertising. In general, the FAA Act and implementing regulations prohibit the use of certain statements on labels of malt beverages introduced into interstate commerce, and the use of such statements in advertisements in interstate commerce, or advertisements that are calculated to induce sales in interstate commerce, if the laws of the State into which the malt beverages are to be shipped impose similar requirements. Prohibited statements include those that are untrue in any particular; that, irrespective of falsity, tend to create a misleading impression; that are disparaging of a competitor's product; or that imply that the use of any malt beverage has curative or therapeutic effects.

The Bureau has held (ATF Ruling 76-1, ATF C.B. 82) that labels and advertising for malt beverages could not state or imply the presence of calories unless such reference was specified either as part of an average analysis or in comparison with the brewer's regular product.

ATF Ruling 76-1 also held that any labeling or advertising references relating to the carbohydrate content of these products could only appear as a part of a statement of average analysis.

In reviewing its position, the Bureau has found that specifying the caloric content of the product in comparison to the brewer's regular product is no longer essential to give the consumer a point of reference. Also, the Bureau has determined that carbohydrate references should be handled in the same manner as caloric references.

Held, caloric and carbohydrate representations made without qualification in the labeling and advertising of malt beverages are considered to be misleading and contrary to the provisions of 27 CFR 7.29(e) and 7.54(e), since they create the impression that the product has value as a dietary aid.

The Bureau will not sanction any caloric or carbohydrate references on labels that do not contain a statement of average analysis. For example:

12 oz. size--average analysis

Calories	96
Carbohydrates	2.8 grams
Protein	0.9 grams
Fat	0.0 grams

The average analysis statement will be optional in advertising for these products.

In addition to the above, but not in lieu of the statement of average analysis on labels, the Bureau will permit statements of caloric or carbohydrate content such as "contains 96 calories per 12 ozs." or "contains 2.8 grams carbohydrates per 12 ozs." on any label and in any advertising of malt beverage products. The serving size, e.g., "per 12 oz.," must be specified in any advertising which does not contain an average analysis statement but need not be stated on labels since such information would be contained in the required average analysis.

Held further, specific caloric and carbohydrate comparisons may be

made in advertising between a malt beverage labeled in accordance with this ruling and an equal volume of a competitor's product labeled in accordance with this ruling. The comparison may not be either misleading or disparaging of a competitor's product. Additionally, a brewer may compare, on labels and in advertising, calories and carbohydrates of a malt beverage the brewer has produced and labeled in accordance with this ruling and an equal volume of the brewer's regular beer.

Examples of allowable comparisons are as follows: "96 calories per 12 ozs.--1/3 less than competitor's name Light Beer"; "2.8 grams carbohydrates per 12 ozs.--1/3 less than competitor's name Light Beer"; "Brand name contains 96 calories per 12 ozs. while competitor's name Light Beer contains 106 calories per 12 ozs."; "Brand name contains 2.6 grams carbohydrates per 12 ozs. while competitor's name Light Beer contains 3.0 grams per 12 ozs."; "90 calories per 12 ozs.--1/2 the calories of our regular beer"; "2.6 grams carbohydrates per 12 ozs.--1/2 the carbohydrates of our regular beer."

Held further, the word "light" (or "lite") may be used as part of the brand or product name of a malt beverage labeled with a statement of average analysis. It may not take the place of or be placed so as to be confused with the class and type designation required by 27 CFR 7.24.

Previously approved certificates of label approval for malt beverages which bear statements of caloric content comparison but not statements of average analysis, and/or which use "light" (or "lite") as part of the brand or product name but do not bear a statement of average analysis, may be used until December 31, 1979. At that time the certificates must be returned for cancellation. A reasonable amount of time will be allowed for the preparation of substitute advertising copy to conform with the requirements of this ruling. However, the transition should be effected as expeditiously as possible.

TOLERANCES

The Bureau has determined that tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein and

fat contents for malt beverages. The intent of these tolerances is to provide for normal production and analytical variables while continuing to ensure that the labeling is not misleading to the consumer.

Held, the statement of caloric content on labels for malt beverages will be considered acceptable as long as the caloric content, as determined by ATF analysis, is within the tolerance +5 and -10 calories of the labeled caloric content. For example, a label showing 96 calories will be acceptable if ATF analysis of the product shows a caloric content between 86 and 101 calories.

Held further, the statements of carbohydrate and fat contents on labels for malt beverages will be considered acceptable as long as the carbohydrate and fat contents as determined by ATF analysis, are within a reasonable range below the labeled amount but, in no case, are more than 20% above the labeled amount. For example, a label showing 4.0 grams carbohydrates will be acceptable if ATF analysis of the product shows a carbohydrate content which is under 4.0 grams (within good manufacturing practice limitations) but not more than 4.8 grams.

Held further, the statement of protein content on labels for malt beverages will be considered acceptable as long as the protein content, as determined by ATF analysis, is within a reasonable range above the labeled amount but, in no case, is less than 80% of the labeled amount. For example, a label showing 1.0 gram protein will be acceptable if ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but no less than 0.8 gram.

Certificates of label approval covering labels with statements of caloric, carbohydrate, fat and protein content which are not in compliance with the above analytical tolerances must be returned for cancellation by December 31, 1979.

ATF Ruling 76-1, 1976 ATF C.B. 82, is superseded.

Inquiries: Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory

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Enforcement), Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC. 20226.

A handwritten signature in dark ink, appearing to read "A. R. Durham". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Director